

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

NL INDUSTRIES, INC., et al.

Defendants,

and

CITY OF GRANITE CITY, ILLINOIS,

LAFAYETTE H. HOCHULI, and

DANIEL M. McDOWELL,

Intervenor-Defendants

No. 91-CV-578-JLF

MOTION FOR A SECOND CASE MANAGEMENT ORDER

The United States of America ("United States") and NL Industries, Inc., Johnson Controls, Inc., Honeywell International Inc., and Lucent Technologies, Inc. (collectively "Settling Defendants"), by their undersigned attorneys, respectfully submit this Motion for a Second Case Management Order.

Discussion

1. The United States initiated this action on July 31, 1991. On February 21, 1992, the Court entered its First Case Management Order ("CMO 1"). CMO 1 divided this action into three phases. Phase I was intended to consider issues regarding the site remedy, Phase II party liability, and Phase III damages and penalties. Furthermore, the Court stayed all third-party claims pending completion of Phase I and provided leave to file third-party claims within 90

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days following completion of Phase I. The Court also provided that defendants would have 60 days to request a Second Case Management Order following conclusion of Phase I.

2. The Court has entered or will soon enter consent decrees pursuant to which the United States has settled or will settle all phases of the case with respect to Settling Defendants.¹ Settling Defendants, or a subset of them, would like to proceed with the third-party claims originally contemplated by CMO 1. Accordingly, the United States and Settling Defendants agree that it is appropriate at this time to request a Second Case Management Order ("CMO 2"), as contemplated by CMO 1.

3. The United States intends to proceed with litigation against two defendants named in its original complaint that have not yet settled with the United States, namely, Ace Scrap Metal Processors, Inc. and St. Louis Lead Recyclers.

4. The Settling Defendants intend to proceed with their contribution counter- and cross-claims against the primary defendants who have not settled with the United States – Ace Scrap Metal Processors and St. Louis Lead Recyclers. The Settling Defendants also wish to add third parties to the action initiated by the United States, as provided for in CMO 1. Those additional third-parties include potentially responsible parties (PRPs) that: (a) were offered a smaller-quantity, *de minimis* settlement by the United States, but did not avail themselves of the offer, (b) did not receive a *de minimis* settlement offer, but otherwise qualified as smaller-quantity PRPs, or (c) neither received a *de minimis* offer nor qualified for one. These potentially responsible parties are listed in Exhibit A.

¹ The consent decrees also name Exide Corporation, GNB Technology and General Battery Corporation as settling parties. However, since this case began, Exide Corporation (now Exide Technologies, Inc.) has acquired GNB Technology and General Battery Corporation. Exide Technologies has filed for relief pursuant to Chapter 11 of the Bankruptcy Code, and has indicated that it will not further participate in this action on its own behalf or on behalf of GNB Technology or General Battery Corporation.

5. Settling Defendants understand that multiparty contribution litigation pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9613(f)(1), places a substantial burden on the resources of the Court. Accordingly, Settling Defendants proposed in CMO 2, a copy of which accompanies this motion, that prior to serving the new third-parties with a summons and complaint, they will provide the third-parties with settlement offers. The third-parties then will have approximately two months to settle without being formally joined in this litigation. If settlements in principle are not reached within the two-month period, Settling Defendants will serve the nonsettling third-parties and join them in this proceeding.

6. Given the number of parties likely to be joined, the United States and the Settling Defendants believe that the Court should consider this litigation a Track C case under the Local Rules. Accordingly, the proposed CMO 2 contains scheduling deadlines consistent with Track C. In addition, the proposed CMO 2 suggests certain modifications to the usual federal and local rules to reduce paperwork. For example, all answers to the third-party complaints will be due on a specified and slightly extended date, unless service is delayed, so that Settling Defendants and the Court will not have to entertain multiple requests for extensions based on staggered service dates. Also, in these types of contribution cases the parties generally cross- and counter-claim against one another. As set out in the proposed CMO 2, such cross- and counter-claims are deemed made and denied. Thus, the proposed CMO 2 relieves the Court, the Settling Defendants and the newly joined third-parties from the burden of filing protective or perfunctory claims and creating otherwise unnecessary paperwork.

7. To further relieve the Court from the burden of entertaining a host of dispositive motions, the proposed CMO 2 includes a provision specifying that all such motions will be filed

at the same time, on a date after discovery is closed. However, this provision provides the parties with an opportunity to request an earlier decision on issues that would reduce the time or expense of litigation for the Court and the parties in general.

8. Finally, as part of the proposed CMO 2, the United States will have the option of following the same scheduling deadlines as those applicable to the Settling Defendants, including asserting its own claims against third-parties or filing dispositive motions after discovery closes. Also, the United States has the option of requesting an earlier trial date for its claims against the two remaining primary defendants, Ace Scrap Metal Processors and St. Louis Lead Recyclers.

9. The scheduling deadlines and suggestions set forth in the proposed CMO 2 are consistent with the Federal Rules of Civil Procedure and the Court's Local Rules, and will expedite resolution of Phases II and III of this action.

Conclusion

Consistent with CMO 1, the United States and Settling Defendants respectfully request that the Court enter the proposed CMO 2.

Respectfully submitted,

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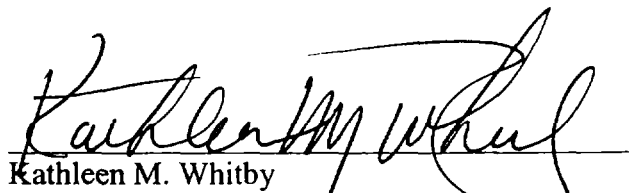
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CERTIFICATE OF SERVICE

This is to certify that a copy of the Motion for a Second Case Management Order was served by regular U.S. Mail, postage prepaid, this 18th day of April, 2003, upon each of the persons listed on the attached Service List.

A handwritten signature in black ink, appearing to read 'Kathleen M. Whitby', is written over a horizontal line.

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EXHIBIT A TO CASE MANAGEMENT ORDER NO. 2

Party	Approx lb.	Percent of Total Non-Settlors
Parties Not Eligible for De Minimis Status		
7. Gopher Smelting & Refining Company	11,482,485.00	5.3879%
8. Straightaway Iron & Metal Company	11,430,778.00	5.3637%
11. Finer Metal Company	7,971,574.00	3.7405%
12. Saunders Lead Company	7,965,770.00	3.7378%
14. Federal Iron & Metal Company	7,283,213.00	3.4175%
15. Suppo Smelting & Refining Company	6,671,068.00	3.1303%
18. Missouri Iron & Metal Company, Inc.	5,970,522.00	2.8016%
19. Chemetco	5,400,943.00	2.5343%
20. Becker Metals Corp.	5,171,446.00	2.4266%
21. Ed Parkinson	5,142,945.00	2.4132%
22. Alter Company	5,063,560.00	2.3760%
23. A. Miller & Company	5,061,837.00	2.3752%
24. Acme Battery Manufacturing Co.	4,965,760.00	2.3301%
25. Madewell & Madewell	4,257,858.00	1.9979%
26. Delco-Remy Division of GM	4,188,761.00	1.9655%
SUBTOTAL	98,028,520.00	45.9980%
De Minimis Offer Recipients/Eligibles		
3. A. Tenenbaum	664,496	0.3118%
5. A & W Battery	41,499	0.0195%
6. Aaron Ferer & Sons Company	508,277	0.2385%
7. ABF Metal Company	2,484,188	1.1657%
8. Ace Battery Incorporated	1,271,467	0.5966%
12. Active Metal Company	1,003,300	0.4708%
13. Aetna Metals	119,420	0.0560%
14. Afram Brothers Company	298,950	0.1403%
15. Albin Co.	12,407	0.0058%
19. American Recycling Company	23,734	0.0111%
20. Anderson Steel, Inc.	194,193	0.0911%
21. Asarco	159,979	0.0751%
22. Ashley Salvage	44,883	0.0211%
23. Astrow Manufacturing	41,875	0.0196%
24. Atchinson & Brown Standard Service	15,697	0.0074%
25. Atlas Industries	205,144	0.0963%
26. B.C. Battery	792,094	0.3717%
30. Batco, Inc.	40,371	0.0189%
31. Battery Headquarters	85,864	0.0403%
32. Battery Salvage	79,990	0.0375%
33. Beckner Iron & Metal	72,000	0.0338%
34. Behr Metals/Division of Joe Behr & Sons	78,580	0.0369%
35. Bell City Battery Company	664,167	0.3116%
36. Belson Scrap and Steel	44,037	0.0207%
37. Ben Greenberg Company	18,094	0.0085%
38. Benjamin Air Rifle	135,117	0.0634%
39. Berkson Smelting Company	35,295	0.0166%
40. Berlinski & Sons	125,624	0.0589%
41. Bert Bollinger	716,522	0.3362%
42. Bill Bergmeyer	130,606	0.0613%
44. Bill's Salvage	724,371	0.3399%
45. Billiton Metals, Inc.	358,136	0.1680%
46. Billow Morrow	41,922	0.0197%
47. Bob Bernstein	171,869	0.0806%
48. Bob Keller Batteries Warehouse	1,419,744	0.6662%

Party	Approx lb.	Percent of Total Non-Settllors
49. Bomgars Supply	79,990	0.0375%
50. Bryan Mfg.	53,765	0.0252%
51. Briggs Used Auto Parts	46,292	0.0217%
52. Bruco Battery Company, Inc.	45,869	0.0215%
53. CBC, Inc.	33,274	0.0156%
57. Calvert's Scrap Yard, Inc.	583,943	0.2740%
58. Campbell Soup	54,000	0.0253%
59. Cash's Scrap Metal & Iron	521,154	0.2445%
60. Cedartown Industries	199,974	0.0938%
61. Central Iron & Metal Company	2,630,115	1.2341%
63. Chanen's Inc.	1,979,812	0.9290%
64. Charles W. Johnson	103,112	0.0484%
65. Chicago Battery	47,984	0.0225%
67. Comfort Printing and Stationery Co.	14,992	0.0070%
68. Commercial Iron & Metal Co.	41,593	0.0195%
69. Commercial Metals Company	2,428,543	1.1395%
70. Consolidated Waste Material Co., Inc.	43,050	0.0202%
71. Continental Can Company	26,413	0.0124%
72. Continental Commodities	81,916	0.0384%
73. Crown Battery	45,164	0.0212%
74. Del Rich Battery & Metal Company	2,391,274	1.1221%
76. Delta Metals	625,112	0.2933%
77. Diamond Scrap Yard	117,916	0.0553%
78. Discount Battery Sales	43,285	0.0203%
79. Diversified Metals Corporation	887,452	0.4164%
80. Don Hibbler	65,514	0.0307%
82. Duggan Industries, Inc.	-	0.0000%
84. Dura Built Auto	81,305	0.0382%
85. E. J. Pfeifer Iron & Metal	78,909	0.0370%
89. Feinberg Bros.	2,361,008	1.1079%
91. Fleenor Battery Wholesale Inc.	125,107	0.0587%
92. Ford Motor Company	2,039,452	0.9570%
93. Ft. Dodge Iron & Metal Co.	159,227	0.0747%
94. Fundamental Metal and Mineral Corp.	325,081	0.1525%
97. G7 Metals	235,363	0.1104%
99. Galaxy Metals	201,807	0.0947%
100. Gary's Metal	1,230,909	0.5776%
101. Gateway E-Z Go	188,225	0.0883%
102. General Waste Products	478,574	0.2246%
103. Glosser Metal Company	41,828	0.0196%
104. Graham Metal Corporation	639,916	0.3003%
106. H. Brecker & Son	416,115	0.1953%
107. H. Brown Company, Inc.	380,867	0.1787%
108. H.S. Kaplan Acrap Iron & Metal	162,940	0.0765%
109. Harold Rodick	79,990	0.0375%
110. Henry Rautbort	143,201	0.0672%
112. Highland Park Waste Material	39,760	0.0187%
114. Houston Scrap	159,979	0.0751%
115. 52. I.C.M.S.	25,050	0.0118%
116. I. Deutch Company	19,974	0.0094%
117. I.J. Sobel & Sons	39,995	0.0188%
118. Imperial Smelting Corporation	1,696,512	0.7961%
120. Inland Metals Refining Company	1,198,104	0.5622%
121. Inter City Battery Company	44,883	0.0211%
122. Interstate Battery Systems of America	2,252,021	1.0567%
123. Intsel Corporation	24,251	0.0114%
125. J. Solomon & Sons	1,534,512	0.7200%

Party	Approx lb.	Percent of Total Non-Settlors
127. J.C. Penny	777,149	0.3647%
128. J & I Metal Company	41,593	0.0195%
129. James H. Tessem	18,329	0.0086%
130. Johnson Metal Company	272,914	0.1281%
131. K.W. Battery	1,638,517	0.7688%
132. Kamen Iron & Metal Company	329,734	0.1547%
133. Kansas City Battery Company	45,211	0.0212%
134. Kasmar Metals, Inc.	201,431	0.0945%
135. Kavanaugh Salvage	152,272	0.0715%
136. Kemco Metal Processing	527,076	0.2473%
137. Kennecott Refining Corporation	42,439	0.0199%
138. Kiewit Construction Corporation		0.0000%
141. Ladyman Engineering Enterprises	34,590	0.0162%
142. Lake Iron & Metal Company	41,734	0.0196%
143. Larry Goad Company	144,987	0.0680%
144. Lefton Iron & Metal	153,493	0.0720%
145. Leslie Cooper battery & Metal Company	1,512,517	0.7097%
146. Lewis Salvage Co. Inc.	985,206	0.4623%
147. Lissner Corporation	3,200,428	1.5017%
148. Lopez Scrap Metal, Inc.	44,037	0.0207%
149. Luria Brothers & Co.	45,822	0.0215%
150. M. Gervich & Sons, Inc.	1,121,922	0.5264%
152. M. Ruben Metal Company, Inc.	1,341,587	0.6295%
153. M.S. Kaplan Company	1,083,525	0.5084%
154. Macco Industries	128,820	0.0604%
155. Mac Glashen Enterprises	28,433	0.0133%
156. Madewell Metals Corporation	1,383,932	0.6494%
157. Madison Scale	828,282	0.3887%
159. McKinley Iron, Inc.	2,944,668	1.3817%
162. Mardians, Inc.	142,919	0.0671%
164. Master Metals	109,974	0.0516%
165. Max Schneider	40,512	0.0190%
166. Max Schwartzman & Sons, Inc.	389,890	0.1829%
167. Metal Recycling Corporation	455,922	0.2139%
168. Metram, Inc.	79,003	0.0371%
169. Metro Metals Recyclers	646,919	0.3036%
170. Meyer Battery Service	14,052	0.0066%
171. Mid-Missouri Metals	1,382,945	0.6489%
172. Midwest Industrial Metals	41,687	0.0196%
173. Midwest Iron & Metal Co.	19,645	0.0092%
174. Mike Asfoor & Sons, Inc.	163,786	0.0769%
178. Morrimet, Inc.	112,277	0.0527%
179. Morris Tick Co. Inc.	2,946,924	1.3828%
180. Murphysboro Iron & Metal	149,734	0.0703%
181. National Metal Company	762,345	0.3577%
182. National Typographer, Inc.	33,603	0.0158%
183. New Castle Junk Company	48,595	0.0228%
184. Norm's Metal Company	38,867	0.0182%
186. Northern Metals	542,679	0.2546%
187. Northwestern Bell Telephone, dba U.S. West, Inc.	112,277	0.0527%
188. O'Dell Iron & Metal Company	1,481,311	0.6951%
189. Ohio New & Rebuilt	159,979	0.0751%
190. Okon Iron & Metal Company	334,856	0.1571%
193. Otto Lerche Firestone	900,329	0.4225%
194. Overland Metals, Inc.	548,601	0.2574%
198. Peoria Battery	128,068	0.0601%
200. Pielet Brothers Scrap Iron & Metal	241,708	0.1134%

Party	Approx lb.	Percent of Total Non-Settlors
202. Plumbing Joint Apprenticeship Training	36,094	0.0169%
203. Pollack Hide & Fur	19,974	0.0094%
204. Pollack, (D.) & Sons	30,501	0.0143%
205. Prairie Steel Company	41,734	0.0196%
206. Prather, Jerry	226,574	0.1063%
207. Price Metal	118,292	0.0555%
208. Price Watson	265,817	0.1247%
209. Prime Battery Sales	165,666	0.0777%
210. Ramak Industries	559,410	0.2625%
211. Redfield Iron & Metal	44,930	0.0211%
213. Reliance Battery Company	25,050	0.0118%
214. Renu Battery Service	23,640	0.0111%
215. Rex Curtsinger, Sr.	860,381	0.4037%
216. Reynolds Electric	1,502,977	0.7052%
217. Rich Battery & Metal Company	234,141	0.1099%
218. Rodick, Harold	79,990	0.0375%
219. Romak Industries	25,379	0.0119%
220. Rosen Metals, Inc.	1,038,219	0.4872%
221. Rosenman, Eli	43,708	0.0205%
222. Roth Brothers	476,695	0.2237%
223. Ruben Metal Co., Inc.	155,843	0.0731%
224. S-G Metals Industries, Inc.	110,303	0.0518%
225. S & R Metal Company	39,995	0.0188%
226. Sadoff Iron & Metal	754,966	0.3543%
227. St. Louis Bottle Iron & Metal Company	39,149	0.0184%
228. St. Louis Law Printing Company	155,561	0.0730%
229. Salvage Battery & Lead Co.		0.0000%
231. Samuel Hide & Metal	37,551	0.0176%
232. Scheer Shooting Supplies	115,520	0.0542%
234. Schupan & Sons, Inc.	36,940	0.0173%
236. Schwartz Metal Processors & Trade	199,034	0.0934%
237. Seidenfeld & Son Iron & Metal	2,344,230	1.1000%
239. Shanfeld Bros. Metal Company	901,081	0.4228%
240. Shanke Metals, Inc.	1,850,334	0.8682%
241. Shapiro Brothers	39,995	0.0188%
243. Shell Mineral Production		0.0000%
244. Shostak Iron & Metal Co., Inc.	3,532,042	1.6573%
245. Sioux City Compressed Steel	370,010	0.1736%
246. Siskin Steel & Supply	39,290	0.0184%
248. Sol Alman Co., Inc.	242,507	0.1138%
249. Sol Tick & Company, dba/Herb Tick Inc.	2,269,504	1.0649%
251. Spartan Printing Company	34,120	0.0160%
252. Springfield Battery Company	2,219,875	1.0416%
253. Staab Battery	208,950	0.0980%
254. Standard Lead Co., Inc.	126,047	0.0591%
255. Standard Storage Battery Company	596,585	0.2799%
256. Stanford Linear Accelerator	64,668	0.0303%
257. Stanley Toebben	731,984	0.3435%
258. Steel Baling Co., Inc.	28,010	0.0131%
261. Summit Steel	39,337	0.0185%
263. Sure-State Battery	1,958,710	0.9191%
264. Swan Rubber Company	41,499	0.0195%
265. Tech-Sil, Inc.	75,008	0.0352%
266. Thermal Corporation	24,862	0.0117%
267. Tom Lewis Salvage	985,206	0.4623%
268. Top Metal Buyers dba/Eighth & Trendly Metals	455,922	0.2139%
269. Triangle Metallurgical, Inc.	28,997	0.0136%

Party	Approx lb.	Percent of Total Non-Settlors
270. Tri-City Scrap Company	16,073	0.0075%
271. Trinity Scrap	39,995	0.0188%
272. URPS Metal Company	41,593	0.0195%
274. Union Compressed Steel	41,358	0.0194%
275. Unicor Federal Prison Industries, Inc.	14,193	0.0067%
276. United Scrap Lead Company, Inc. c/o Charles Z. Bailen	1,860,721	0.8731%
278. V.H. Homes & Sons	81,540	0.0383%
279. Versatile Metals	2,523,666	1.1842%
280. Vince Jacks Iron & Metal	4,141,739	1.9434%
282. W. R. Lewis Supply Company	887,029	0.4162%
283. Wadell Brothers Metal Company	3,317,405	1.5566%
285. West End Hide & Fur	344,162	0.1615%
286. West End Iron & Metal Company	44,695	0.0210%
287. West Kentucky Battery, Inc.	122,052	0.0573%
288. Western Auto	623,702	0.2927%
289. Western Gun & Supply	259,755	0.1219%
290. Westerville Creamery Company	61,849	0.0290%
291. Wicks Organ Company	93,619	0.0439%
292. William Lans Company	10,010	0.0047%
293. William S. Lasich & Sons	242,742	0.1139%
295. World Metal Buyers	124,966	0.0586%
SUBTOTAL	115,086,000	54.0020%
TOTAL	213,114,520.00	100.0000%

No. 91-CV-578-JLF

2. Certain defendants have entered into Consent Decrees with the United States, including NL Industries, Inc., Johnson Controls, Inc., Honeywell International Inc., and Lucent Technologies, Inc. (collectively, “Settling Defendants”), resolving their liabilities with regard to the site. These Settling Defendants have requested leave of Court to file third-party claims, which is hereby granted.

3. Settling Defendants, or any subset of them, shall join third-party defendants to this action by filing a third-party complaint with the Court no later than August 15, 2003, and serving summons and complaint consistent with the Federal Rules of Civil Procedure and the Court's Local Rules. Settling Defendants shall attach a copy of this CMO 2 to the third-party complaint. This CMO 2 shall be binding on any parties joined in this proceeding after entry of this Order.

4. The multiparty litigation that Settling Defendants contemplate is likely to place a substantial burden on the resources of the Court. Accordingly, Settling Defendants will provide those third-parties that they intend to join to this action with a settlement offer by June 16, 2003, or as soon thereafter as practical for those third-party defendants who cannot immediately be located. By August 15, 2003, Settling Defendants shall file any necessary third-party complaints against parties who decline the settlement offer contemplated in this paragraph. Settling Defendants shall serve third-party summons and complaint as soon thereafter as practical, and no later than December 12, 2003, without further leave of Court.

5. To expedite processing requests for extension to file answers or otherwise respond to the third-party complaints, all answers to the third-party complaint will be deemed to be due on the later of 20 days after service or September 30, 2003. Furthermore, all parties shall be deemed to have filed and denied cross- and counter-claimed against one another for purposes of this action, and no further service of cross- or counter-claims or answers to cross- or counter-claims shall be necessary unless such claims assert a peculiar relationship between parties not generally applicable to other parties (for instance, a third-party defendant claims that a second third-party defendant

has entered into an agreement to indemnify the former against an action such as that contained in the third-party complaint).

6. For the convenience of the Court, Settling Defendants will identify a Liaison Counsel upon commencement of their third-party actions ("SD Liaison Counsel"). SD Liaison Counsel shall be responsible for (a) creating a document repository consisting of the documents of all parties, whether submitted as part of initial disclosures under Local Rule 26.1 or in response to specific discovery requests, and (b) coordinating all Settling Defendants' activities with the Court.

7. Consistent with the Federal Rules of Civil Procedure and the Court's Local Rules applicable to a Track C case, the following schedule shall govern this action:

- a. Initial disclosures under Local Rule 26.1 shall be exchanged no later than October 17, 2003.
- b. The initial meeting of the parties under Local Rule 16.2 shall take place no later than October 20, 2003.
- c. The report of the parties under Local Rule 16.2 shall be submitted no later than October 27, 2003.
- d. The Court will hold a scheduling conference on November 7 (or such other date as is convenient for the Court's schedule), if necessary, to consider any changes to CMO 2. The report of the parties shall specify whether this scheduling conference will be necessary and detail the issues to be raised during the conference.
- e. All parties having similar interests in this litigation shall make efforts to coordinate interrogatories and document requests so as to avoid or

minimize the need for any other party to perform duplicative file searches or repetitive interviews of the same employees and agents on the same topics. No party shall serve any interrogatory that seeks the same information as an interrogatory already answered by the party on which it is served, except for reasonable requests for supplementation. All interrogatories and document requests must be filed so that it is possible to provide answers and responses prior to the discovery cutoff date.

f. Discovery cutoff shall occur on August 31, 2004. Each party shall use its best efforts to make current or former officers and employees who are properly subject to discovery available for depositions upon notice of deposition without subpoena or further process. The appearance fee for the court reporter and the cost of an original and one copy of the transcript shall be paid by the party or parties noticing the deposition. The cost of any additional copies of the transcript shall be paid by the parties ordering the copies.

i. Discovery pertaining to facts and fact witnesses shall be complete by April 1, 2004, except as required to prepare a rebuttal expert and only with leave of Court.

ii. If Settling Defendants intend to use expert witnesses at trial, by May 4, 2004 they shall designate their experts and provide the other parties with the following for each expert: (a) a description of qualifications with respect to the subject matter on which the expert will testify, (b) the substance of the facts known and opinions held as to which the expert is expected to testify, and (c) copies of all documents relied on

in preparation for giving deposition or trial testimony. Depositions of Settling Defendants' experts shall take place by June 1, 2004.

iii. Third-party defendants shall designate their experts and provide Settling Defendants with the same information referenced in paragraph (ii), above, by July 1, 2004. Depositions of third-party defendants' experts shall occur by July 30, 2004.

iv. Any rebuttal expert witnesses deemed necessary by any party shall be designated and subject to the information disclosure provisions of paragraph (ii), above, by August 16, 2004, and deposed prior to discovery cutoff.

v. Notwithstanding Federal Rule of Civil Procedure 26(b)(4)(C), each party shall bear the fees and expenses of its own experts in preparing for and attending their own depositions.

g. Any party seeking a ruling on a dispositive motion shall comply with Local Rules 7.1 (c), (g) and (h) by filing a Notice of Motion with the Court on or about, but no later than, September 20, 2004, and serving the Notice of Motion and Motion, along with supporting briefs and affidavits, on all parties on the same day. Parties opposing the motion shall serve opposition briefs and affidavits on the moving party no later than November 1, 2004. The moving party may incorporate a reply brief not to exceed five pages into the motion packet referenced in Local Rule 7.1(g), and shall file the motion packet by November 8, 2004. At the time the motion packet is filed, the moving party shall serve on the other parties only those portions of the packet that the parties have not received

prior to the filing. Parties intending to file dispositive motions on similar issues shall strive to consolidate those issues into a joint motion.

h. Dispositive motions shall be entertained prior to September 20, 2004 only by leave of Court, which shall be sought by filing a request that sets forth in no more than five pages the legal issues that would be considered, and the reasons that early disposition of these issues would substantially reduce the burdens of litigation on the Court and on all parties to the case. The Court will give preference to issues as to which the parties agree that an early decision will reduce the time or expense of litigation.

i. The parties' settlement conference shall be held no later than November 15, 2004. The Court encourages the parties to request a settlement conference at an earlier time if the conference has a reasonable likelihood of resulting in settlements.

j. A date for the final pre-trial conference shall be set by the Court at a later date. For purposes of preparation, the parties should assume that the final pre-trial conference will occur on or about December 1, 2004.

k. The Court will set a final trial date consistent with the Court's Local Rules.

8. Two defendants, St. Louis Lead Recyclers and Ace Scrap Metal Processors, Inc. (collectively "Non-Settling Defendants"), have not settled with the United States. The United States may amend its pleadings and/or add additional parties by no later than December 12, 2003. As regards its claims against the Non-Settling Defendants, the United States shall not exceed the various deadlines applicable to

Settling Defendants' claims against third-party defendants. However, the United States may file a dispositive motion to determine the liability of Non-Settling Defendants, and the amount of damages owed to the United States, at any time prior to the otherwise applicable deadlines. Furthermore, the United States may seek leave of Court to determine the liability of, and damages due from, Non-Settling Defendants in an earlier separate trial.

9. This CMO 2 may be modified or supplemented by further order of the Court.

IT IS SO ORDERED.

ENTERED this _____ day of _____, 2003.

**THE HONORABLE JAMES L. FOREMAN
DISTRICT JUDGE**